IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.930 of 1997
In
Writ Petition No.781 of 1995

Khashaba K. Jadhav,
C/o. Vithal M.Mohite,
Khoja Chawl No.7, Room No.3,
Near Ram Mandir, Mulund (West),
Bombay - 400 080. .. Appellant (Org.Respondent No.1.)

Versus

1. S.H.Kelkar & Co.Ltd., a company registered under the Companies Act, having its office at Devkaran Mansion, 36, Mangaldas Road, Bombay - 400 002 and having its factory at Lal Bahadur Shastri marg, Mulund (W), Bombay - 400 080.

2. The Presiding Officer, 5th Labour Court, having his office at Arun Chambers, Tardeo Road, Bombay 400 034. .. Respondents (No.1 Org.Ptnr. & No.2 Org.R.No.2.)

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WITH

Appeal No.931 of 1997
In
Writ Petition No.783 of 1995

Jagannath S. More,
residing at Khoja Chawl No.2,
Room No.15, Check Naka, Ram Mandir,
Mulund (West), Bombay 400 080. .. Appellant (Org.R.No.1)

Versus

1. S.H.Kelkar & Co.Ltd.,)
a company registered under)
the Companies Act, having its)
office at Devkaran Mansion,)
36, Mangaldas Road,)
Bombay - 400 002 and having)
its factory at Lal Bahadur)
Shastri marg, Mulund (W),)
Bombay - 400 080.)

2. The Presiding Officer,)
5th Labour Court, having his)
office at Arun Chambers,)
Tardeo Road, Bombay 400 034.).. Respondents
(No.1 Org.Ptnr. &
No.2 Org.R.No.2.)

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WITH

Appeal No.932 of 1997
In
Writ Petition No.782 of 1995

Ram Kisan D. Mourya,)
C/o.Taj Bahadur Choudhary,)
Opposite Satguru Malika Hotel,)
Near Laundry, Bal Rajeshwar Road,)
Mulund (West), Bombay - 400 080.).. Appellant
(Org.R.No.1.)

Versus

1. S.H.Kelkar & Co.Ltd.,)
a company registered under)
the Companies Act, having its)
office at Devkaran Mansion,)
36, Mangaldas Road,)
Bombay - 400 002 and having)
its factory at Lal Bahadur)
Shastri marg, Mulund (W),)
Bombay - 400 080.)

2. The Presiding Officer,)
5th Labour Court, having his)
office at Arun Chambers,)

Tardeo Road, Bombay 400 034.).. Respondents
(No.1 Org.Ptnr. &
No.2 Org.R.No.2.)

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Ms N.D. Buch for the Appellants.

S/Shri R.D.Dhanuka with R.D.Yadav and Ms V.M.Chaudhary for the Respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 8TH JANUARY, 2007

ORAL JUDGMENT: (Per DR.D.Y.CHANDRACHUD, J)

1. A Learned Single Judge of this Court allowed three Writ Petitions filed by the employer under Article 226 of the Constitution in order to impugn the correctness of Awards of the Labour Court on a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. The Labour Court had granted reinstatement with 50% back wages and continuity of service. The learned Single Judge while allowing the Petitions filed before the Court set aside the Awards of the Labour Court holding them to be unsustainable. The workmen have moved this Court in appeal against the judgment of the learned Single Judge. Since common questions arise before this Court

in all the three Appeals, the Appeals have been heard together and will be disposed of by this judgment.

2. For convenience of reference, it would be material to note the relevant facts insofar as they pertain to Appeal No.930 of 1997 in Writ Petition No.781 of 1995. There is no dispute between learned Counsel that save and except for the dates relating to service of the concerned workmen in the references in the three cases, the material facts are similar. The case of the workman was that he was employed on 21st June, 1981 as an unskilled worker and that he had worked for about 7 to 8 months in each year upto 1983. The workman claimed that in the year 1984, he worked for a period of about 3 months. In the meantime, according to the workman, the employer had made certain other temporary workers permanent. The workman had instituted a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions and Preventions of Unfair Labour Practices Act, 1971 for relief of permanency in service. During the pendency of the complaint, the employer, it is alleged, did not continue the workman on the ground that he had been appointed only on a temporary basis. The complaint was dismissed. Thereupon, the workman alleged that he had approached the employer for being

provided with work which was refused. A demand was raised and eventually a reference was made under Section 10 of the Industrial Disputes Act, 1947.

3. The demand of the workman for being reinstated with continuity of service and full back wages was adjudicated upon by the Labour Court. Evidence was led on behalf of the workman. The Labour Court by its Award dated 31st March, 1994 granted reinstatement with 50% back wages and continuity of service with effect from 27th March, 1984, the date on which the services of the workman were discontinued.

4. In the Petition that was filed by the employer before this Court, the Learned Single Judge held that it was an undisputed position that the workman was appointed purely on a temporary basis from time to time for a particular period. The workman had not specifically pleaded that he had completed 240 days in the immediately preceding period of 12 months before the date of termination. The Learned Single Judge has come to the conclusion that the workman had manifestly failed to discharge the burden of pleading and proving that he had completed 240 days of service in the immediately preceding period of 12 months. The Learned Single Judge also came to a conclusion that

the Labour Court, inasmuch as it entered a finding to the effect that the workman had been appointed on a temporary basis only with a view to deprive him of his right of permanency, had made out a case which was neither pleaded nor established by the workman. The Learned Single Judge held that there was absolutely no evidence to establish a case of victimisation.

5. On behalf of the Appellants, Learned Counsel assailed the correctness of the finding of the Learned Single Judge. It was urged that the evidence of the workman will support the ultimate conclusion which was drawn by the Labour Court. Learned Counsel submitted that the workman had duly discharged the burden of establishing his case by stepping into the witness box. On the other hand, no evidence was adduced by the employer and, in the circumstances, the Labour Court was justified in coming to the conclusion that services of the workman were continued on a temporary basis solely with a view to deprive him of the benefit of permanency and that the ultimate order of termination was an act of victimization. The same submission has been urged in relation to all the three cases.

6. In considering the grounds which have been

urged in support of the Appeal, it would be, at the outset, necessary to advert to the pleadings in the statement of claim that was filed by the workman in the reference before the Labour Court. The case of the workman was that he had worked, after his initial engagement on 21st June, 1981, for "about 7 to 8 months" upto 1983 and that in the year 1984, he had worked for a period of three months. The defence of the employer, on the other hand, was that all the workmen, who formed the subject matter of the references, were engaged as casual workmen in the Export Packing Department depending upon the exigencies of work. The workmen were, according to the employer, engaged from time to time according to the requirement of work when the exigencies of work necessitated the engagement of additional hands. The employer specifically disputed that the workman had completed 240 days by disclosing the extent of the work which has been rendered from year to year.

7. The workman stepped into the witness box. The evidence of the workman is completely vague on the actual number of days that he had worked in the immediately preceding period of 12 months prior to the date of termination. According to the workman, he had worked for six months in the year 1981, for 7-8 months

in 1982-83 and between January and March, 1984 immediately before his services were terminated on 27th March, 1984.

8. On the state of the pleadings and evidence, we are of the view that the Learned Single Judge was entirely justified in holding that there was an absence of a specific pleading and of proof with regard to the workman having completed 240 days of work. The burden to establish completion of 240 days clearly lies on the workman. The entire body of law has been considered and reiterated in the recent judgment of the Supreme Court in **Surendranagar District Panchayat v. Dahyabhai Amarsinh,** reported in AIR 2006 SC 110. The evidence of the workman is similarly silent on the quantum of work that was available with the employer. No evidence was produced on the part of the workman to establish what quantum, if any, was available, nor had he sought production of such records as were in possession of the employer to establish the availability of work.

9. The Labour Court in the course of its Award accepted the factual position that the workman had been appointed on a temporary basis from time to time. The Labour Court, however, drew an adverse inference

against the employer and held against the employer on the ground that no oral evidence was led by the employer in rebuttal. Similarly, the Labour Court held that no documentary evidence was available on record to conclude that the workman was employed during exigencies of work. The Labour Court has clearly ignored the well settled position in law that the burden of establishing his case lay upon the workman and it was for the workman to establish through cogent pleadings and proof that he had completed 240 days in the year immediately preceding the termination of his service and that despite the availability of a sufficient quantum of work, the employer had continued to engage him on a temporary basis with a view to avoid the conferment of the benefits of permanency. The Labour Court drew such an inference in the absence of any evidence whatsoever. The finding of Labour Court that the employer has victimised the workman is similarly without any basis in the evidence on record. A plea of victimisation has to be substantiated by adducing clear and cogent evidence which is absent in the present case.

10. In the circumstances, we are of the view that the Award of the Labour Court suffered from a clear error apparent on the face of the record and was

inconsistent with the well settled position in law. The Learned Single Judge has, in the exercise of the jurisdiction under Article 226 of the Constitution, correctly set aside the Award of the Labour Court. The facts of the companion two appeals are similar and the same submissions have been urged in all the three cases.

11. In the circumstances, we do not find any merit in these Appeals. The Appeals shall accordingly stand dismissed. The bank guarantees furnished by the employer in pursuance of the interim order dated 21st July, 1999 shall stand discharged.

12. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)